

WITNESS: BLUNDELL EXAM BY MR. GLEASON

1 Q. You have indicated in your testimony that if there
2 are areas where your service will not provide acceptable
3 quality of service, you will fix that?

4 A. My testimony is that when a customer signs up for
5 the service we will send a customer service technician to the
6 home to set it up, set up the unit, make sure that service --
7 that that customer has sufficient service. If not, if the
8 signal strength isn't strong enough, then we will take
9 additional measures to make sure that the customer does have
10 adequate signal. So you used the word quality of service, I
11 just wanted to -- I wouldn't use that word. I would use
12 signal and that's what my testimony refers to.

13 Q. I appreciate the distinction. You don't believe
14 you are subject to quality of service requirements. Is that
15 correct?

16 A. Actually the reason for my distinction is that I
17 think we provide better service than many land line
18 incumbents. That was my reason for making the distinction.

19 Q. Okay. What might it require to provide -- what's
20 the worst case situation in providing adequate signal
21 strength throughout the service area?

22 A. Worst case would be if the company, through these
23 various stages of sort of an ever-heightening degree of
24 additional modifications, the last step would be to add a
25 cell tower. And the company will make the commitment that if

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1 that is the absolute worst case scenario, the company will
2 indeed do that.

3 Q. How long will that take?

4 A. Putting up a cell tower? Probably, given
5 permitting and the rest, probably a couple of months. We can
6 actually have, given our FCC license we could actually put up
7 a portable in the interim. So the permanence of a tower,
8 while it might be a month or two down the road, we could put
9 a mobile cellular tower in, as I said, probably within a
10 week.

11 Q. You say subject to permitting. What sort of
12 permitting is required?

13 A. Local permitting, local land use permitting.

14 Q. Okay. Do you have the ability to assure that those
15 permits will be granted every place you think you need one?

16 A. Of course not.

17 Q. So you cannot commit, can you, to provide necessary
18 facilities everywhere they are needed to provide necessary
19 signal strength everywhere it's needed, can you?

20 A. Actually we have in the past and we can in the
21 future. I mean, if we can't get a permit for one particular
22 site, we will -- we scope several sites in an area and we
23 eventually get service to the areas we need it.

24 Q. Have you been granted eminent domain authority?

25 A. No.

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1 Q. In terms of data speed, you testified regarding
2 LMDS authority that the Applicant holds. I didn't
3 understand, I wasn't clear from your testimony whether those
4 are areas that are identical with those for which you seek
5 designation here as an ETC?

6 A. I would have to check. Frankly, we have licenses,
7 LMDS licenses throughout the Western United States and I
8 would have to check. I don't have it, I don't have it off
9 the top of my head where our licenses are in Kansas.

10 Q. So with regard to LMDS as a solution for data speed
11 concerns about the service you provide, you cannot testify
12 today that the LMDS licenses that you hold are sufficient to
13 resolve those concerns every place you are applying for
14 designation, correct?

15 A. My testimony with regard to LMDS licenses was more
16 general, frankly.

17 Q. Well, let's make it more specific then. Do you
18 know whether you hold LMDS licenses for all areas in which
19 you are applying for certification as an ETC?

20 A. No.

21 Q. Okay. Give me just a moment to find the reference
22 in your testimony I need to ask you about just generally so
23 you will know where I'm going. You made reference to the
24 direct testimony of Staff witness Janet Buchanan with regard
25 to monitoring the use of KUSF support. Do you recall that

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1 testimony? Maybe you can help me find it quicker than I can
2 find it.

3 A. Well, let's see.

4 Q. Oh, right, it's at page 15 of your rebuttal
5 testimony?

6 A. Okay, yes.

7 Q. You are referencing the Commission adopting a
8 method of monitoring the use of support. Do I take it from
9 your testimony that you regard that determination yet to be
10 made by the Commission as being one to which you will be
11 subject to, whatever it may be?

12 A. Yes.

13 Q. If that involves review of the costs of providing
14 service you will agree to make your costs subject to review
15 by the Commission?

16 A. We would be subject to any Commission conditions or
17 orders, yes.

18 Q. And your initial and continued receipt of KUSF
19 would be reasonably conditioned upon your compliance with
20 those monitoring methods, whatever they may be deemed to be?

21 A. Well, no, that's not what my testimony is. I
22 believe the order directs us and Sprint to work with Staff at
23 the Commission to put together a report. So in preparing
24 that report, we will have some, I mean, there will presumably
25 be some resolution of issues that we agree on, disagree on.

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1 And based on that report, the Commission presumably will make
2 an order, yeah, that we will have to comply with. I don't
3 know what that order is going to say. It's awfully
4 speculative to try and predict that.

5 Q. But it's in your testimony?

6 A. What is?

7 Q. And it's suggested in your testimony that whatever
8 the method of monitoring which is adopted will be sufficient
9 to support the public interest and you will be subject to it?

10 A. Yes.

11 Q. Do I read that correctly?

12 A. Yeah. And, furthermore, if the Commission, if
13 there is a method for insuring compliance with KUSF and USF
14 support that we haven't met, this Commission will have the
15 authority, the jurisdiction to withdraw our ETC designation,
16 absolutely.

17 Q. Okay.

18 A. That's the trigger point. So to conclude that they
19 don't have any enforcement, I think is erroneous.

20 Q. Fine. Are you familiar with the Commission's
21 consideration of quality of service standards for wireless
22 carriers seeking ETC designation?

23 A. Yes. And that separate docket on quality of
24 service standards, yes.

25 Q. And do you understand that the Commission has

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1 decided not to impose specific qualifications and
2 requirements at this time?

3 | A. Yes.

4 Q. Would you concur that if the Commission later
5 adopts such quality of service standards, that your -- that
6 the Applicant would be subject to those requirements and its
7 continued receipt of KUSF funding would be conditioned upon
8 meeting those requirements?

9 MR. AYOTTE: I'm going to object as calling for a
10 legal conclusion.

11 CHAIR WINE: Mr. Gleason.

12 MR. GLEASON: Just trying to find out whether we
13 can get things settled as the Applicant wants or whether or
14 not we are just putting things off for later argument.

15 CHAIR WINE: I do think that is a legal question
16 and is one the Commission can better answer.

17 MR. GLEASON: Very well. Thank you. I think
18 that's all the questions I have for this witness, Mr.
19 Chairman. Thank you.

20 CHAIR WINE: Thank you, Mr. Gleason. Mr.
21 Caplinger.

22 CROSS-EXAMINATION

23 BY MR. CAPLINGER:

24 Q. Good afternoon, Mr. Blundell, we briefly met this
25 morning. I'm Mark Caplinger on behalf of the State

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1 Independent Alliance and I will try not to duplicate too many
2 of the questions of Mr. Gleason. We do share a lot of the
3 same concerns, however. Do you have your testimony there
4 handy to look at?

5 A. Yes.

6 Q. I'm going to point you to several references in
7 your testimony. I'm going to begin on page four, line 13.

8 A. Of the direct testimony?

9 Q. Excuse me, rebuttal, yes, sorry. I guess it begins
10 at line 12. You are talking about and you are pointing out
11 to this Commission what it should look at as far as the
12 public interest concern, the benefits of competition. And
13 can we agree that the benefits of competition, as you say,
14 there are primarily rates, quality of service and choice. Is
15 that correct?

16 A. Yes, those are the primary benefits.

17 Q. Okay. Could you tell me, is there anywhere in the
18 Federal Telecommunications Act or the Kansas
19 Telecommunications Act that mandates that the Kansas
20 Corporation Commission grant Western Wireless ETC
21 designation?

22 A. In the case of non-rural telco areas, yes, if all
23 the criteria are met. In the case of rural telco areas, yes,
24 if all the criteria are met and there is a public interest
25 finding I suppose.

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1 Q. Well, a distinction that you are making is because
2 in the Federal Act where it says shall or may designate more
3 than one ETC?

4 A. Uh-huh.

5 Q. So "it may" for rural areas, then, allows the state
6 commissions discretion as to whether or not to do so?

7 A. Uh-huh.

8 Q. So that doesn't mandate the state commission grant
9 Western Wireless ETC designation, does it?

10 A. No. That's why I condition it on if there is a
11 public interest finding and the Commission has exercised its
12 discretion, then.

13 Q. They may?

14 A. I suppose so.

15 Q. Okay. On page five of your rebuttal, and I'm going
16 to be talking primarily here from rebuttal testimony.

17 A. Okay.

18 Q. You make, beginning on line 18 you make the
19 statement that it's clear that the LECs' proposed public
20 interest analysis seeks to avoid competition and that's
21 contrary to the act and the FCC directives. Do you see that?

22 A. Uh-huh.

23 Q. Exactly whose analysis are you pointing to there?

24 A. It's clear to me that the -- let's see, let me just
25 make sure. Yes, the so-called, the choice between

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1 competition and universal service is a false choice. And the
2 FCC has explained as such that both are compatible and, not
3 only compatible, but can and should be achieved together. A
4 public interest analysis that rejects that, in my mind and as
5 I have expressed in the testimony, clearly seeks with
6 singular purpose to avoid the competition, yeah.

7 Q. So you are talking about the analysis of
8 competition and universal service as being contradictory?

9 A. The specific point in my testimony was in response,
10 it was follow-on to the statement about, the statement about
11 the false choice between the competition and universal
12 service, yes.

13 Q. Do you say -- and I'm assuming you rebutted all the
14 testimony of Mr. Gleason's witness as well as the two
15 witnesses of the State Independent Alliance. Did you see in,
16 for example, Mr. Barron's testimony where the following or
17 the factors that were pointed out for the Commission to take
18 into consideration public interest criteria were reservation;
19 advancements of universal service; quality services; just,
20 reasonable and affordable rates; access to adequate services;
21 viable financial plan for offering universal service and the
22 impact on the carrier of last resort?

23 A. Uh-huh, yes, I saw those.

24 Q. Now, that also is part of the public interest
25 analysis that's been put forth by the incumbent LECs in this:

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1 docket, isn't it?

2 A. Uh-huh.

3 Q. You are not asking that the Commission, with your
4 comment here that this analysis be dismissed by this
5 Commission. You are not asking that those factors be
6 dismissed by the Commission, are you?

7 A. Again, my focus here was on the, and there is a
8 reference here to Mr. Watkins' testimony, about the false
9 choice. That's where the statement comes from, that that
10 public interest analysis about the false choice, I can't
11 describe any other purpose than to avoid the competition.
12 Because if you agree with that statement, you will -- I mean,
13 that's the logical conclusion.

14 Q. Okay. But the other factors that I just read to
15 you, you are not asking that the Commission should dismiss
16 those as public interest criteria that they should consider,
17 are you?

18 A. I --

19 MR. AYOTTE: I'm going to object to the question as
20 vague. Mr. Blundell's rebuttal testimony addresses a
21 multitude of the factors Mr. Caplinger has addressed. If the
22 question is, by this statement on page five, line 19 and 20,
23 is he seeking to dismiss all of those claims by that
24 statement, I think the testimony speaks for itself. But I'm
25 just not understanding the question, I guess.

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1 CHAIR WINE: Mr. Caplinger.

2 MR. CAPLINGER: Well, I think the witness needs to
3 address that. That's why I'm asking the witness the question
4 exactly what is he asking that the Commission dismiss as far
5 as the public interest analysis. He says it's clear that the
6 LECs' proposed public interest analysis which seeks to avoid
7 competition is contrary to the act and the FCC directives.
8 I'm asking for clarification from the witness as to his
9 testimony. Are we talking about those public interest
10 criteria that I just set forth? Are you asking that the
11 Commission dismiss those criteria from consideration?

12 MR. AYOTTE: Again, through this sentence? Because
13 you have to read the whole answer to the question to figure
14 out what it's addressing.

15 CHAIR WINE: If the witness can answer, I think he
16 should. There is some unclearness in the question and in the
17 testimony and so let's see if we can get more specific.

18 A. So, again, if the question is what this statement
19 intended to accomplish, it was in response to the false
20 choice which in turn the FCC has responded to very strongly.
21 It should be dismissed. The proposition that there is a
22 false -- that there is a choice between competition and
23 universal service should be dismissed.

24 Q. Okay. And that's all you are talking about with
25 your comment there on page five. Is that correct?

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1 A. Yes.

2 Q. Okay. The bottom of page five, beginning on line
3 26, we are talking about high speed data capability. Is that
4 correct?

5 A. That's right, high band width services.

6 Q. And on the top of page six, lining at line two, you
7 are talking about the fact that high speed data capability is
8 not a supported service. Do you see that?

9 A. Actually I'm sort of reciting what the Barron,
10 Watkins testimony says, but -- so it's not -- it's a
11 recitation of other testimony, not mine.

12 Q. Well, I'm sorry, I will begin on line two. You
13 say, "What these witnesses fail to recognize is that high
14 speed data capability or access to advanced services is not a
15 supported service of the FCC Rule 54.101."

16 A. Yes, I said that.

17 Q. Okay. Are you suggesting that the high speed data
18 capability issue is not a consideration for the public
19 interest determination because it's not a supported service?

20 A. It's not a supported service and this Commission
21 has already agreed and made that determination. If in
22 determining public interest, either the congress or the
23 legislature had intended to bring in those that they
24 dismissed in setting forth the criteria, I think they would
25 have done that and they didn't. They would have said it

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1 twice. They would have -- well, they would have created and
2 the FCC would have created that as a criteria and they didn't
3 do that. So I would say it's definitely not within the
4 public interest consideration. It shouldn't be a factor that
5 the Commission should look at in determining public interest.

6 Q. Did you read the testimony of Staff witness Janet
7 Buchanan?

8 A. Yes.

9 Q. Did you see in her testimony where Staff believes
10 that data capability and advanced services in fact advance
11 the public policy of the state of Kansas?

12 A. Yes, and I don't disagree. Those are good
13 objectives. My point is an objective and a criteria are two
14 different things. You can't reject an application on the
15 basis of an objective. If the Applicant doesn't meet the
16 basic criteria, that's all. It may be a good thing for the
17 people of Kansas and it may very well be. But an Applicant
18 that doesn't, that meets the criteria can't be rejected on
19 that basis.

20 Q. I will try to be clear here. Are you saying that
21 it should not be a public interest criteria, high speed data
22 capability for the public interest determination?

23 A. I think that we can, I think we can say that the
24 criteria, as specific as they are, don't include high speed
25 data, clearly. Everybody has agreed to that. To bootstrap

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1 in those criteria, those things that an applicant can't meet
2 that aren't in the criteria into a public interest standard
3 defeats the purpose of having the criteria. I will also add
4 that it wasn't said earlier, our company has, as well as the
5 industry, is well on its way in the next couple of years to
6 actually exceeding the data speeds of land line companies.
7 With the next generation of technology upgrades will be --
8 our company will be in the high speed data business and in no
9 time, by the end of next year.

10 Q. Is that a for certain statement?

11 A. That's what the company has committed to. Our
12 president has testified that by the end of next year we will
13 be looking at data speeds of 156 K.

14 Q. Would you consider data speeds to be an advanced
15 service?

16 A. Would I consider data speeds to be -- the provision
17 of high speed data?

18 Q. Yes.

19 A. To be an advanced service? I think advanced
20 services includes a lot of different things. I'm not sure
21 that advanced services is defined to include high speed data.
22 I don't know. I'm not sure.

23 Q. Well, for the sake of our discussion, let's
24 consider high speed data capability an advanced service, if
25 you would, with me. I'm trying to be clear on your testimony

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1 here. Do you think that the Commission, in considering the
2 public interest criteria, should there be a relationship
3 between the universal service principles and objectives that
4 congress codified in Section 254 of the Federal Act and the
5 provisions of 214 of the Federal Act in designating ETCs?

6 A. I'm sorry, should --

7 Q. Should there be a relationship between universal
8 service principles in Section 254 of the act and the
9 provisions in Section 214 in designating the ETC?

10 A. If you look carefully at 254, 254 is a set of
11 principles and objectives that the joint state/federal --
12 excuse me, the Commission and the joint federal/state board
13 are directed to look at. They are not criteria for the
14 designation of ETCs. So the relationship is actually fairly
15 nil.

16 Q. Well, isn't it the ETCs that are the carriers that
17 receive the funds, aren't they the ones that are expected to
18 build and operate networks and provide services which will
19 achieve the universal service objectives?

20 A. Aren't ETCs -- I suppose it's the other way around.
21 The carriers that provide the services are the ETCs. But I'm
22 not following.

23 Q. Well, what my question is, isn't it the ETCs, those
24 that receive -- the eligible telecommunications carriers,
25 aren't those the ones that are expected to operate and build

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1 the networks that provide the universal services?

2 A. They are expected to, hopefully by this Commission
3 as well as the FCC, to provide the basic nine supported
4 services, yes.

5 Q. On page or -- on page six, line 17, you state there
6 that Mr. Barron, who is a witness on behalf of the State
7 Independent Alliance, does not think it's reasonable to allow
8 a CMRS provider to be an ETC without being subject to the
9 requirements imposed on land line LECs. Do you have a copy
10 of his testimony?

11 A. I don't have it up here, no.

12 Q. Maybe I can just read it to you. We will do it
13 this way.

14 A. Okay, sure.

15 Q. Mr. Barron was asked the question, "Has Western
16 Wireless met any of the Kansas specific public interest
17 criteria you describe above?" And he answers, "No, they have
18 not. I would like to make it clear that I do not expect
19 Western wireless or any other CETC to have to file identical
20 infrastructure or regulatory reform plans." Do you have a
21 copy there?

22 A. Yes.

23 Q. If you would just look at the top of page 12.

24 A. Okay, I have reviewed it.

25 Q. Doesn't he -- in fact, when you look at his

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1 testimony there, doesn't he in fact say that it wouldn't be
2 really reasonable to apply the identical requirements that
3 land line LECs have to carriers that are CMRS providers?

4 A. Then he concludes that it seems biased in favor of
5 CETCs.

6 Q. Doesn't he say he would like to make clear that, "I
7 do not expect Western or any other CETC to file identical
8 infrastructure or regulatory reform plans to the ones filed
9 by the ILECs"?

10 A. That was a quote, yes. He goes on to say, "It
11 seems biased in favor of competitive ETCs to force ILECs to
12 live up to certain promises while the competitive ETCs are
13 not held to the same standards."

14 Q. In fact, to read it all, he says, "However, I do
15 think it is reasonable to have any prospective CETC to prove
16 to the Commission and other interested parties its compliance
17 with the same types of requirements that the ILECs covered in
18 their plans." Is that correct?

19 A. That's right. It's the third sentence.

20 Q. Let's move on to page seven, line nine, where your
21 answer begins. And you are talking about the regulatory
22 treatment that's being addressed by this Commission. The
23 regulatory treatment that you are talking about that the
24 Commission has decided is where they decided that Western
25 Wireless would not need to be certified in the state. Is

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1 that correct?

2 A. That's one of the regulatory obligations, yeah.
3 And I included a specific sentence to that effect, yes, if
4 that's what you mean.

5 Q. Well, on line 13 you say, "That same order further
6 recognizes that LEC regulatory obligations are greater than
7 those imposed on an ETC but concluded that had the
8 legislature intended that the requirements it imposed on LECs
9 should be imposed on ETCs, it clearly would have included
10 such a provision in the act." Do you see that?

11 A. It's actually a quote from the Commission order.

12 Q. Yeah, and I think it's Order Number 7, I believe,
13 not Number 6 in checking the record. And if you look at
14 Order Number 7 where you reference there?

15 A. And I don't have it here.

16 MR. CAPLINGER: Can I approach the witness?

17 CHAIR WINE: Certainly.

18 MR. AYOTTE: I have got a copy of Order 7.

19 Q. Order 7, paragraph 28. Do you see paragraph 28?

20 A. Uh-huh. Yeah, looks like I transposed 7 and 6.

21 Q. Okay. So that should be Order Number 7 then in
22 your testimony?

23 A. That's right. The cite to, yes, that paragraph 28,
24 had the legislature intended.

25 Q. Okay. And without taking the time to read

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1 paragraph 28 of Order Number 7, if you review that paragraph,
2 doesn't the Commission discuss K.S.A. 66-2005(a)?

3 A. Yes.

4 Q. Do you know what 66-2005(a) calls for?

5 A. I don't have it right here.

6 Q. Would you agree with me that it calls for the
7 requirement that the local exchange carriers in the state
8 file an infrastructure plan?

9 A. I don't have it in front of me. I couldn't make
10 that statement, no.

11 Q. Subject to check, would you agree with me that it
12 calls for local exchange carriers to file infrastructure
13 plans?

14 A. If you say so, but I don't have that.

15 CHAIR WINE: We will take notice of what the act
16 says.

17 Q. Okay. Do you see anywhere in the testimony of any
18 witness of State Independent Alliance that suggests that
19 Western Wireless file infrastructure plans?

20 A. I don't recall that, no.

21 Q. And continuing on page seven and on to the top of
22 page eight, you are indicating that the Commission has
23 already determined its regulatory status over CMRS providers.
24 Is that correct?

25 A. I'm sorry, the question again?

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1 Q. The very bottom of page seven you start with and
2 you state, "The regulatory status of a CMRS provider has been
3 addressed by this Commission and does not impact any criteria
4 set forth in Section 214(e), including the public interest."
5 Is that correct?

6 A. That's what the testimony says, yes.

7 Q. Well, the Commission -- in your opinion, has the
8 Commission determined whether or not to apply the equal
9 access requirement to Western Wireless?

10 A. Has the Commission -- I'm sorry.

11 Q. Has the Kansas Corporation Commission determined
12 whether or not it's going to apply the equal access
13 requirement to Western Wireless?

14 A. Yes.

15 Q. What's your understanding of that?

16 A. My understanding is that the Commission has
17 determined not to apply the equal access requirement.

18 Q. Are you familiar with Order Number 9 in this
19 docket?

20 A. Yes.

21 Q. Do you see where in Order Number 9 they withdraw
22 any finding that they wouldn't apply equal access to Western
23 Wireless based on what type of service it's going to be
24 providing?

25 MR. AYOTTE: Do you have a reference, counselor,

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1 for Order Number 9?

2 MR. CAPLINGER: Certainly. It's page four,
3 paragraph eight.

4 MR. AYOTTE: Mr. Chairman, could I provide a copy
5 of the order to the witness?

6 CHAIR WINE: Certainly.

7 Q. If you would turn to paragraph eight?

8 A. Yes, I'm just reading it.

9 Q. Do you see in paragraph eight where it states, "To
10 date, the Commission has no basis to determine whether
11 Western Wireless' universal service offering will be fixed or
12 not?"

13 A. Yes.

14 Q. "That determination must be made before a clear
15 determination can be made with respect to whether a
16 particular wireless service provider is or is not exempt from
17 providing equal access pursuant to 47 U.S.C. 332(c)(8)."

18 A. Yes, I see that.

19 Q. Would that change your answer?

20 A. It still doesn't have to do with equal access. I
21 thought your question was do you see in Order Number 9 where
22 the Commission rescinded a finding on equal access.

23 Q. Yes. If you go on there, "Even if a company
24 provides fixed wireless service, the Commission believes it
25 does not have sufficient evidence to decide whether 332(c)(8)

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1 would apply to the service provided."

2 A. Uh-huh.

3 MR. AYOTTE: Mr. Chairman, just to expedite the
4 hearing, the question calls for a legal conclusion. And I
5 would be happy to state the company's position for the
6 benefit of counsel on that legal issue. But I don't want to
7 be accused of assisting the witness in the response.

8 CHAIR WINE: Yes, if we can -- I think the
9 cross-examination attempts to reconcile this order with the
10 prefiled testimony. And to that extent that you seek that
11 clarification, you may proceed. But we don't need to
12 determine what his opinion is of the meaning of the Order 9.

13 MR. AYOTTE: Our position is that the Commission
14 has made a determination that they are preempted in the
15 application of the equal access requirement as it relates to
16 the CMRS provider. In Order Number 9 the Commission has
17 said, now we have to determine whether this is a CMRS service
18 or a fixed wireless, which is really not a legal term but
19 that's what everyone calls it. Thus, we have provided
20 testimony; we brought the wireless access unit here. Mr.
21 Blundell has testified concerning the nature of the service
22 offering so that the Commission can make a determination that
23 it is a CMRS service and not a land line service. But in our
24 view, that doesn't change the Commission's prior
25 determination that they are preempted under 332(c)(8) with

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1 respect to an equal access requirement for a CMRS service.

2 And that will be up to the Commission to decide whether this
3 is a CMRS service or not.

4 CHAIR WINE: Mr. Caplinger.

5 MR. CAPLINGER: Again, our legal opinions would
6 differ on that I guess. What I'm trying to accomplish with
7 this witness here is whether or not he is clear on whether
8 this Commission is going to apply the equal access
9 requirement to the universal service offering of Western
10 Wireless.

11 MR. AYOTTE: And I think he has answered that
12 question.

13 Q. Well, if he has, was your answer no?

14 A. Is this Commission going to apply the equal access
15 requirement to our universal service offering?

16 Q. That's correct.

17 A. Again, in an earlier order this Commission said
18 that it would not. In Order Number 9, the Commission raised
19 some question that I hopefully addressed as to whether or not
20 this is some kind of different animal. And hopefully I have
21 answered it, that it is not a different animal and that the
22 pre-emption and the decision by this Commission was the
23 correct one.

24 Q. Okay. Why don't we go ahead and move on then and
25 talk about, if we are talking about that the Commission has

WITNESS: BLUNDELL

EXAM BY MR. CAPLINGER

1 decided, again talking about the top of page eight, where you
2 indicate the Commission has already determined its regulatory
3 status over CMRS providers, is it your opinion that the
4 Commission has already made a determination as to what
5 requirements or conditions it's going to put on Western
6 Wireless as an ETC under its authority to impose terms and
7 conditions on Western Wireless to receive ETC designation?

8 A. The Commission hasn't issued the ETC order. So I
9 have no way of -- have they imposed conditions on our grant
10 of ETC designation? No.

11 Q. That's what I'm asking. Are you of the opinion
12 that they have decided that question yet?

13 A. No.

14 Q. Okay. So we really don't know the status of the
15 regulatory treatment of CMRS providers by this Commission, do
16 we?

17 A. Actually, we have got a fair amount of, we have got
18 quite a body of law now. This Commission has acted at least
19 three times on the substantive issues as to how the, what the
20 regulatory treatment of a CMRS is.

21 Q. Well, we haven't addressed the issue specifically
22 and this Commission hasn't issued any orders, has it, as to
23 what terms and conditions it's going to place on Western
24 Wireless in order to receive the ETC designation?

25 A. No, huh-uh.

WITNESS: BLUNDELL

EXAM BY MR. CAPLINGER

1 Q. Okay. On line 16 on that same page eight, you say
2 that the regulatory treatment of CMRS providers has been made
3 clear by the FCC. Do you see that there?

4 A. Page eight?

5 Q. Page eight, line 16.

6 A. Yes. They specifically rejected, yes.

7 Q. And you are citing an order of the FCC. Is that
8 correct?

9 A. Yes.

10 Q. Now, what's the date of that order?

11 A. Let's see. May 8th, 1997.

12 Q. Okay. Are you aware of the Fifth Circuit Court
13 decision dated July 30th, 1999, that addressed, among other
14 issues, that the criteria that the states can consider with
15 respect to ETC designation wherein they rejected the FCC's
16 narrow eligibility criteria for ETC designation, and it also
17 addressed the regulatory authority of the states over CMRS
18 providers?

19 A. If you could give me the name of the case, it would
20 help refresh my memory. Was it the office of Texas?

21 MR. AYOTTE: It's the Texas Office of Public
22 Utilities Commission v. FCC.

23 A. Okay.

24 Q. That's correct. Are you familiar with that order?

25 A. Am I familiar? Yes.